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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1589

VIOLA N. RICHARDSON, as County Clerk and Registrar of Voters for the County of Mendocino, Individually and as a representative of the class of all other County Clerks and Registrars of Voters, *Petitioner,*

vs.

ABRAN RAMIREZ, LARRY GILL and ALBERT LEE, on behalf of themselves and all others similarly situated, LOS PINTOS, 7th STEP FOUNDATION, INC., (CALIFORNIA AFFILIATES), PRISONERS' UNION, and THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA, *Respondents.*

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS

QUESTIONS PRESENTED

1. Whether California's denial of the right to vote to former felons who have completed their terms of incarceration and parole, and are otherwise qualified

to vote, violates the equal protection clause of the Fourteenth Amendment.

2. Whether inconsistent interpretation and application of California's voting laws by 58 individual county registrars denies potential voters equal protection of the law.

STATEMENT OF THE CASE

Article II, Section 3 of the California Constitution denies suffrage to those who have been convicted of "infamous crimes." In 1966, the California Supreme Court, as a matter of state constitutional law, definitively construed Article II, Section 3[1] and related statutory provisions as excluding from the voting rolls only those persons who had been convicted of crimes which threaten "the purity of the ballot box." *Otsuka v. Hite,* 64 Cal.2d 596 (1966). Since that time, California's 58 Registrars of Voters have established 58 separate and often inconsistent policies as to which of California's several hundred felonies were "infamous crimes" and which were not.

Pursuant to his responsibilities to apply election laws in a uniform manner, California's Secretary of State conducted a survey in early 1972 of the registration practices of California's 58 County Registrars. A chart indicating the results of the Secretary's survey appears beginning at page 32 of the Single Ap-

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[1]In the November, 1972 general election, Article II, Section 1 of the California Constitution was re-enacted by referendum as Article II, Section 3. The California Supreme Court found that the re-enactment made no substantive change in the provisions at issue in this case. *Ramirez v. Brown,* 9 Cal.3d 199, 204-05 (1973).

pendix, previously filed.[2] The following are clear examples of the geographic disparity in the application of California's election laws that existed at the time respondents petitioned the California Supreme Court for relief:

[A] A person convicted of burglary who had been released from prison and parole was registered and permitted to vote if he lived in Alameda, Contra Costa, Fresno, Marin, San Joaquin, Sonoma, or Yuba Counties. He was denied registration if he lived in El Dorado, San Bernardino, or Santa Cruz Counties.

[B] Similarly, at least eight counties (Yolo, Sonoma, Santa Clara, San Francisco, San Diego, Sacramento, Contra Costa, and Alameda) would have registered a robbery ex-felon whereas seven others (Siskiyou, Santa Cruz, San Joaquin, San Bernardino, Orange, Monterey, and Los Angeles) would not.

[C] Twenty-one counties indicated they would register an ex-felon convicted of possession of dangerous drugs, but Butte and San Joaquin would not. San Bernardino would register one convicted of possession but not one convicted of use. Orange, San Bernardino, and Santa Cruz would register one convicted of possession or use but not sale of drugs. At least nine of the others register all three.

[D] Butte County indicated that it would not register a person convicted of drunk driving

[2]The Single Appendix is hereinafter referred to as "App."

causing death but would register one convicted of wife beating. San Bernardino would not register one convicted of "sex charges" but would register an ex-felon convicted of child molesting. San Diego County would register one convicted of first degree murder but not one convicted of non-support. Los Angeles County would not register an ex-felon whose crime was statutory rape but would register one who was guilty of forcible rape. Santa Clara permitted registration if the crime was prostitution, but San Bernardino would not.

[E] Several counties registered those convicted of embezzling, forgery, or insufficient funds. (Alameda, Colusa, Contra Costa, Marin, Riverside, Sacramento, Santa Clara and San Francisco). Santa Clara would register one convicted of income tax evasion but Los Angeles would not. San Joaquin registered one convicted of transporting counterfeiting tools but denied the franchise to another guilty of issuing bad checks.

[F] The responses of Sonoma and San Joaquin Counties indicated that they had a "two-conviction" rule. There, persons convicted of two non-infamous crimes, such as assault and armed robbery, would be refused registration because two non-infamous crimes were apparently equivalent to one infamous crime. (App. pp. 13-15)

Respondent Abran Ramirez is a 44-year old Spanish-speaking farmworker who has lived in San

Luis Obispo County, California, for ten years. He and his wife have five children. Twenty-three years ago—when he was 21—he was convicted in Texas of a felony entitled "robbery by assault." The offense arose out of an argument in a restaurant. At his trial he was without counsel and pleaded guilty on the advice of the judge. After serving only three months in jail, he was released on parole. His parole successfully terminated over 11 years ago. He applied to register to vote on February 15, 1972, at the San Luis Obispo County Clerk's office and was denied registration on the ground he had been convicted of a felony. (App., p. 6) Respondent Ramirez would have been registered to vote if he lived in any one of at least 17 other California Counties. (App., p. 34)

Respondent Albert Sang Lee, a resident of Salinas, California, is 55 years old, married, and has four children. Nineteen years ago he was convicted of drug possession. After serving two years in prison he was paroled. His parole successfully terminated 15 years ago. He applied to register to vote on March 17, 1972, and was denied registration by the county clerk on the sole ground of his felony conviction. (App., p. 7) Respondent Lee would have been registered to vote if he lived in any one of at least eight other California Counties. (App., p. 33)

Respondent Lawrence Gill is 46 years old and lives with his wife and four children in Stanislaus County, California. He is employed by the Gallo Winery. He was convicted in 1952 and 1967 of second degree burglary, and in 1957 of forgery. All of his convictions arose from attempts to obtain money to maintain a

heroin addiction. He served his time in prison and successfully completed parole and terminated his drug dependency. On April 18, 1972, he applied to vote at the office of the county registrar of voters and was refused registration on the sole ground of his prior felony conviction. (App., p. 7) Respondent Gill would have been registered to vote if he lived in Alameda, Contra Costa, or Marin County. (App., pp. 34-35)[3]

On May 31, 1972, respondents Ramirez, Gill, and Lee individually and on behalf of a class of approximately 100,000 disfranchised California former felons, sought an original writ of mandate in the California Supreme Court to require California's chief election officer, the Secretary of State, and all of California's 58 County Registrars to register those ex-felons whose terms of incarceration and parole had expired. The original jurisdiction of the California Supreme Court was invoked because of the state-wide impact of the questions involved and the then impending national elections. *Ramirez v. Brown,* 9 Cal. 3d 199, 202-203 (1973).

Respondents presented the California Supreme Court with data showing the geographical disparities in the application of the "infamous crime" standard, with evidence demonstrating the complete absence of opportunity for fraud under current election practices and with data showing that no election-related

[3]Other named Respondents are three non-profit organizations whose members are directly adversely affected by ex-felon disfranchisement, and the California League of Women Voters, a non-profit California corporation whose purpose is to promote active citizen participation in government. (App., pp. 8-9)

felonies had been reported in California since 1919. (App., pp. 4-24 and Exhibits to Petition for Writ of Mandate.) After reviewing the evidence presented, the California Supreme Court held in a unanimous decision that the disfranchisement of ex-felons who were not then incarcerated or on parole was no longer constitutionally permissible in California. *Ramirez v. Brown, supra.*

On May 26, 1973, the County Clerk and Registrar of Voters for Mendocino County, Viola N. Richardson, filed a Petition for a Writ of Certiorari from the judgment in *Ramirez v. Brown, supra.* This Court granted Certiorari on October 9, 1973.

SUMMARY OF ARGUMENT

1. In 1849, when California first adopted its constitutional provision denying the franchise to those convicted of "infamous crimes," abuse of the electoral process was rampant. There was no procedure for registration of voters, and every adult male could, and often did, vote more than once. The buying and selling of votes was common; prospective voters were often rounded up like cattle and delivered to the polling places at the appropriate time to place their pre-marked ballots in the ballot box. The more than 100 years that have passed since that time have seen extensive changes in California's election procedures —to such an extent that vote fraud is a virtual impossibility today. The exclusion of former felons from the franchise may have once been arguably justifiable

in order to protect the purity of the ballot box, but today it serves no interest of the state; and, indeed, contravenes the interest the state has in effective and complete rehabilitation of persons who have completed their prison terms and parole. California's disfranchisement of ex-felons, therefore, violates the equal protection clause of the Fourteenth Amendment.

2. There is nothing in the legislative history of Section 2 of the Fourteenth Amendment or the decisions of this Court to give weight to the contention that Section 2 affects or controls the ambit of the Equal Protection Clause as it is applied to the right to vote. Section 2 was intended to be no more than a specific, supplementary remedy for Congress to enforce in the event newly emancipated blacks were denied the franchise. In *Oregon v. Mitchell,* 400 U.S. 112 (1970), this Court declined to give to Section 2 the very construction urged by Petitioner in this case. In *Oregon,* this Court upheld a federal law passed pursuant to the equal protection clause of the Fourteenth Amendment preventing the states from denying the franchise in federal elections to those persons eighteen years of age despite the specific language of Section 2 stating that no penalty shall be suffered by the states for denial of suffrage to persons under twenty-one years of age.

3. In 1966, the California Supreme Court definitively construed the phrase "infamous crime" in the California Constitution to include only those crimes which threaten the purity of the ballot box. *Otsuka v. Hite,* 64 Cal. 2d 596 (1966). In the seven years

since that decision, the registrars of voters in the fifty-eight California counties have determined on an ad hoc basis who, in their individual opinions, will be denied the right to vote. A survey conducted by the California Secretary of State, the chief election officer, showed such disparity of practice by county registrars that practically no two counties are alike. This unbridled discretion vested in county registrars, resulting in 58 different standards of eligibility to vote, in itself violates the equal protection clause of the Fourteenth Amendment.

ARGUMENT

I.

CALIFORNIA CONSTITUTIONAL PROVISIONS AND STATUTES THAT DENY THE RIGHT TO VOTE TO AN ENTIRE CLASS OF POTENTIAL ELECTORS VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

A. Petitioners Must Demonstrate that California's Disfranchisement of Former Felons is Based Upon a Compelling State Interest and is the Least Restrictive Method Available to Protect that Interest.

Neither Petitioner nor Amicus Curiae has met directly the merits of the equal protection clause argument presented by petitioners below and followed by the California Supreme Court in *Ramirez v. Brown, supra.* A brief analysis of this Court's opinions in recent voting rights cases, however, clearly demonstrates that the California Supreme Court correctly traced, perceived and applied the current standards of equal protection to California's exclusion of former felons from the franchise.

Since this Court's decisions in *Carrington v. Rash*, 380 U.S. 89 (1965)[4], *Harper v. Virginia State Board of Electors*, 383 U.S. 663 (1966)[5], *Kramer v. Union Free School District*, 395 U.S. 621 (1969)[6], and *Cipriano v. City of Houma*, 395 U.S. 701 (1969)[7], it has become clear that a statutory denial of the "fundamental" right to vote may not be justified by any state on the premise that there exists a rational relationship between the statute and its purpose. Rather, as this Court held without dissenting opinion in *Evans v. Cornman*, 398 U.S. 419 (1970)[8], again in *City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204 (1970)[9], and unanimously in *Bullock v. Carter*, 405 U.S. 134 (1972)[10], complete disfranchisement of a

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[4]In *Carrington*, when Texas servicemen were found to be excluded from the franchise solely on the basis of their military status, the Court held that the statutory creation of such a disfranchised class imposed an "invidious discrimination in violation of the Fourteenth Amendment." 380 U.S. at 96.

[5]In *Harper*, the absolute denial of the franchise to those persons who could not pay a poll tax was held unconstitutional.

[6]In *Kramer*, the Court surveyed voter disqualifications based upon status as a non-parent or non-property owner, and held that such statutes violated the Equal Protection Clause.

[7]In *Cipriano*, a *per curiam* decision reiterated the reasoning of *Kramer* and struck down the Louisiana State Constitutional provision which disfranchised a class of non-property owners.

[8]In *Evans*, this Court unanimously held that Maryland's complete denial of the vote in all local, state, and federal elections to persons who lived within the state's geographical boundaries, but on a federal enclave, was unconstitutional.

[9]During the 1970 term, in *Kolodziejski*, this Court ruled that a city could not disfranchise persons who sought to vote in elections to approve the issuance of general obligation bonds solely on the basis of their status as non-property owners.

[10]In *Bullock*, the Court found that an exorbitant Texas filing fee system had a real and appreciable impact on the rights of potential candidates and voters, and on that basis held that it contravened the Equal Protection Clause.

class of potential voters must be founded upon an *actual,* compelling state interest.

In the last case of a denial of voting rights decided by this Court prior to the California Supreme Court's decision below, Tennessee's durational residence laws were declared violative of the equal protection clause of the Fourteenth Amendment. *Dunn v. Blumstein,* 405 U.S. 330 (1972)[11]. In the *Dunn* case the State of

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[11]Subsequent to the California Supreme Court decision in *Ramirez v. Brown,* 9 Cal.3d 199, 107 Cal.Rptr. 137 (1973), this Court has rendered two decisions involving voting rights. Both cases dealt with time limits requiring voters to indicate party affiliation in order to be eligible to vote in primary elections. In both cases the State asserted that the purpose of the time limit in question was the prevention of "raiding," *i.e.* the practice of wholesale changes in registration in an attempt to cause the election of an opposition party candidate who would be easy to defeat in the general election. In *Rosario v. Rockefeller,* ____ U.S. ____, 93 S.Ct. 1245 (1973) the Court found that petitioners had "concededly" failed to register in time for the primary for no apparent reason. *Id.* at p. 1250. There was nothing in the New York statutory scheme which prevented the particular petitioners in that case from registering and voting in the primary and there was therefore not found to be any violation of the Equal Protection Clause. The subsequent case, *Kusper v. Pontikes,* ____ U.S. ____, 42 U.S. Lw.Wk. 4004, November 19, 1973, involved an Illinois statutory scheme which operated to bar change of registration from one party to another until a voter had completely abstained from a primary election. Thus under the Illinois scheme there was no opportunity for the petitioner to register for the party of his choice in the primary election. This Court held that Illinois law unconstitutional.

These two primary preference cases are discussed by the Court principally as freedom of association cases since they involve the voter's choice of party affiliation. In *Rosario* the Court takes care to reaffirm and distinguish its prior decisions in *Carrington, Kramer, Cipriano, Kolodziejski, Dunn* and *Evans:*

> "In each of those cases, the State totally denied the electoral franchise to a particular class of residents, and there was no way in which the members of that class could have made themselves eligible to vote. In *Carrington,* for instance, the Texas Constitution disabled all servicemen from voting in Texas, no matter how long they had lived there. In *Kramer,* residents who were not property owners or parents were completely pre-

Tennessee argued that its durational residence requirements were essential to "insure purity of the ballot box"—the same interest California asserted in this case.

This Court in *Dunn*, overruled an earlier *per curiam* affirmance of a lower court decision upholding Maryland's durational residence requirements in *Druedling v. Devlin*, 380 U.S. 125 (1965), stating:

> "[A]s devices to limit the franchise to knowledgeable residents, the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that

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cluded from voting in school board elections. In *Cipriano* and *Kolodziejski*, the States prohibited non-property owners from ever voting in bond elections. In *Evans*, Maryland refused to permit residents at the National Institute of Health, located within its borders, ever to vote in state elections. And in *Dunn*, Tennessee totally disenfranchised newly arrived residents, *i.e.*, those who had been residents of the State less than a year or residents of the county less than three months before the election." 93 S.Ct. at 1249.

Petitioners in *Ramirez*, however, like those voters in *Carrington*, *Kramer*, *Cipriano*, *Kolodziejski*, *Dunn*, *Evans*, and *Kusper*, were completely denied registration.

durational residence requirements are necessary to further a compelling state interest." 405 U.S. at 360.

The decision in *Dunn* graphically demonstrates the test which a restriction on voting must meet. A state imposed limitation on, or denial of, voting rights may not rest merely upon a showing that its function is derived from either a rational basis or from a compelling governmental interest. Nor can a state simply show that the denial is rooted in historical precedent. To constitutionally limit the right to vote, a state must have a compelling interest, show the necessity of the means employed to promote it, and demonstrate those means constitute the least restrictive alternative available. *Dunn v. Blumstein, supra,* at 342-343.

B. The Reasons for Total Disfranchisement Asserted by Petitioner Do Not Constitute a Compelling State Interest and the Methods Chosen Are Not the Least Restrictive Available.

Under the aforementioned decisions of this Court, California may properly attempt to justify its franchise exclusion of former felons by virtue of a compelling state interest. Maintenance of "the purity of the ballot box" has been the articulation of that interest.[12] As *Kramer, supra,* and its progeny make

[12]The California Supreme Court adhered to its determination in *Otsuka v. Hite,* that the purpose of California's disfranchisement was to deter election fraud. *Ramirez, supra,* at 206. However, the only "interest" actually asserted below by the State was the claimed need to continue the disfranchisement of persons currently incarcerated or on parole. In both Respondent Secretary of State Brown's pleadings (See Record for Return to Alternative Writ and Points and Authorities) and at oral argument (A transcript of

clear, a state may not rest a voting exclusion on evils merely "theoretically imaginable." *Williams v. Rhodes,* 393 U.S. 23, 33 (1968). Those bases found more theoretical than real will not support wholesale disfranchisement of a class of potential voters. *Evans v. Cornman,* 398 U.S. 419 (1970). Petitioner has not placed one fact before this Court or the California Supreme Court to support that claimed interest. Nor has petitioner disputed one factual allegation made by respondents. (App. pp. 44-51.)

Recent decisions make it clear that a criminal conviction does not permit a cavalier inference of moral unfitness for all purposes and for all times. The California Supreme Court in *People v. Beagle,* 6 C.3d 441, (1970), in limiting the use of felony convictions in the impeachment of witnesses, quoted with approval Mr. Chief Justice Burger's observation in *Gordon v. United States,* 383 F.2d 936 (D.C. Cir. 1967) that all felony convictions may not be treated equally:

> "The nearness or remoteness of the prior conviction is also a factor of no small importance.

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which appears in Appendix A hereto), the Attorney General agreed that ex-felons who had completed their terms of incarceration and parole should not be denied the right to vote. Appendix A at pp. i-iv. Furthermore, on behalf of himself and the Secretary of State, he admitted to the California Supreme Court during oral argument that the state-wide disparity in the application of California's voting laws was clearly unconstitutional. He stated:

> "I think there's no question you have the geographical denial of equal protection on that ground." (Appendix A, p. iv).

The Attorney General concluded his oral argument by indicating to the California Supreme Court that if it was going to limit its decision to restoring the right to vote to the class of former felons not presently incarcerated or on parole, he would agree with such a decision. Appendix A, p. ix. The court in *Ramirez v. Brown, supra,* n. 18 at 217, noted the limitation of its decision to exactly that class of former felons.

> Even one involving fraud or stealing, for example, if it occurred long before and has been followed by a legally blameless life, should generally be excluded on the ground of remoteness." 383 F.2d at 940-41.

In spite of the fact that the duty to come forward with empirical data rests upon petitioner and she has failed to do so, respondents have not been content simply to rely on this absence of evidence to prevail. Rather, respondents have presented ample evidence to show that:

(1) Election procedures have been modernized to the point that present-day opportunity to manipulate the process is practically non-existent. As a result, voter fraud, vote buying and other election crimes simply no longer occur in California.

(2) Half the states now provide, in one form or another, automatic restoration of the franchise to former felons who complete parole. Those states have not reported any consequent rise in the incidence of election law violations, or any other harmful effect of including former felons among those entitled to vote.

(3) California has over 70 separate criminal statutes dealing with the elective process and these provide the State with ample protection against abuse.

(4) The whole purpose of rehabilitation is to re-integrate the former felon fully into society. It makes absolutely no sense to punish perpetually persons who have served their sentence and finished

parole by denying them the right to vote, the right most fundamental to citizen participation in society.

1. California's current election practices and regulatory statutes adequately protect the electoral process.

A century ago the State of California may have feared justifiably that unscrupulous individuals could corrupt the electoral process through the misuse of the right to vote. Whatever the original basis for the State's disfranchisement of ex-felons, it must remain a matter for conjecture in the silence of the historical record. California's Constitutional Convention of 1849 adopted the "infamous crime" exclusion without debate or inquiry; the 1870 convention transferred the exclusion from Art. II, Section 5 to Art. II, Section 1 without material change or comment.[13]

However, colorful records of frontier elections remain:

> "By custom, the ballot box was any sort of paltry cubical container found lying about the neighborhood. In San Francisco's first municipal election under American auspices, in 1846, they used an empty crate that had held flasks of lemon syrup. Down at the Pueblo de Nuestra Señora La Reina de Los Angeles, known to the Yankees as "Loss Anjeluss," it was a candle box perched on the window ledge of an adobe shack. And in Vallejo, up the bay from San Francisco, the election officers simply trotted out the same old cracker box, year

[13]Browne, *Debates in the Convention of California*, 75, 481 (1850); Willis and Stockton, *California Constitutional Convention of 1879*, 5, 394 (1880).

after year, until someone discovered that one of the judges was tucking supplementary ballots through a knothole in the back.

These vulnerable, virgin ballot boxes, crude as they were, attracted hordes of eager citizens, some of whom came to vote not once but several times. There was no register; the ballots were not numbered; and every man was encouraged to exercise his franchise, whether he was entitled to it or not. Even the crews of two French men-of-war voted in one San Francisco election."[14]

The passage of 120 years has brought remarkable changes in California election procedures. Haphazard and unsupervised Nineteenth Century frontier balloting has evolved into an orderly, regulated institution. Statutory reform, technological changes, and philosophical awareness of the electorate render individual voting fraud a relic of the past.

Contemporary studies of campaign and electoral practices in the United States are virtually devoid of any suggestion that individual vote-buying presently persists in any part of the country. The last reported case of vote-buying in California occurred in 1908.[15] The last such prosecution ever to be initiated in Los Angeles County occurred in 1926.[16] On the federal level, the total convictions for election law violations of all kinds between 1962 and 1970 made

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[14]Reinhardt, *Tapeworm Tickets and Shoulder Strikers*, 3 *American West*, 34, 37 (Western History Assoc. Quarterly) 1966.

[15]*Bush v. Head*, 154 C. 277 (1908).

[16]14 U.C.L.A. L. Rev. 699, 702 (1967).

up .000063 of all dispositions.[17] In the absence of definitive studies, commentators suggest that the practice of vote-buying is either extremely rare or extinct. (*Record*, Appendix to Points and Authorities filed with original Writ of Mandate.)

One commentator has concluded,

> "The characteristic complaint about popular elections until late in the nineteenth century was that they led to the sale of votes; that is to say, to individual transactions between poor men who had votes and rich men who wanted seats. Individual corruption of this kind is almost extinct in Western societies. This is due partly to the large size of modern electorates, partly to a tacit bargain between competing parties. Parties agree that on the whole the purchase of individual votes is expensive and embarrassing, and therefore discourage zealots anxious to compete in this sort of auction."[18]

California similarly exhibits a clean electoral pattern:

> "Honest elections are no longer the predominant problem, at least not in California. Channels for

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[17]Division of Procedural Studies and Statistics, Administrative Office of U.S. Courts. The statistics encompass generally all federal electoral violations (18 U.S.C. §§ 592-612), and do not indicate the presence or absence of prosecutions specifically for vote buying (18 U.S.C. § 597). Out of 299,559 total dispositions during the period, 42 dispositions and 19 convictions involved electoral offenses. These convictions may have included such esoteric crimes as keeping troops at the polls (§ 592), promising the use of influence by a candidate (§ 599), and soliciting political contributions from persons on relief (§ 604).

[18]Mackenzie, *Free Elections* 153 (1958). See also Rae, *The Political Consequences of Electoral Laws* 68 (1967) (voting corruption "is probably very rare in general elections".)

> contesting elections seem to be effective and the election officials have a healthy respect for public opinion with regard to the modern institutions of the secret ballot, permanent registration, and a non-partisan local precinct board, as testified to by the myriads of court decisions upholding procedures and the decreasing numbers of penalties meted out by the courts".[19]

Political reforms in the electoral process during the past century have been accompanied by significant changes in the mechanical voting process itself. The use of uniform paper ballots which eliminated the supplying of ballots directly from party headquarters with the attendant risk of being premarked, first occurred in California in 1872. (Pol. C. §§ 1187-88, now Elec. C. § 10000 *et seq.*)

This change cured some corruption but gave rise to the "Tasmanian Trick" whereby a voter exchanged his blank ballot with a ballot pre-marked by the party boss, which in turn was deposited in the ballot box. California's introduction of the Australian ballot in 1891 put an end to the practice by placing a numbered stub in the voting book which had to match the stub on the ballot handed to the election officer.[20]

Voting machines similarly advance the cause of ballot purity by making the "ballots" inaccessible to physical manipulation.[21] Over fifty percent of the

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[19]Jamison, *Local Election Administration in California*, Bureau of Governmental Research (1952) at 52.

[20]Reinhardt, *supra*, note 8 at 88.

[21]Buchanan and Bird, *Money as a Campaign Resource*, Tennessee Democratic Senatorial Primaries, 1948-1964, in Alexander,

1960 presidential vote, and sixty-five percent of the 1964 presidential vote, was cast on voting machines, demonstrating that "who votes is not so important as who counts."[22]

Today, the polling process is thoroughly regulated by the State and hemmed in by control mechanisms at every stage. For example, every precinct in the State encompasses approximately 200 voters polled (Elec. Code § 1561); in turn, each precinct is supervised by an independent board of three or more election officials (Elec. Code § 1604); each official must reside in or near the precinct which he supervises (Elec. Code § 1607). Such control maximizes the likelihood of personal knowledge of the voter by officials and eliminates the chances for even the slightest impropriety. Modern registration procedures, including check and double checks as to one's eligibility and identity, have also gone a long way towards eliminating the opportunity for election fraud.

Regulatory and mechanical changes in the electoral process have also been accompanied by philosophical maturation:

> "Party conflict since the 1930's has reflected social and economic appeals to a greater extent than in the preceding decades. Even though they do not yet approach the ideological fervor of European

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Studies in Money and Politics, Volume II (1970) 67, 68 and 88, note a decline in the "time honored practice of giving two dollars or a pint of whiskey to each citizen who manages to get to the polls .... Votes paid for simply were not delivered if the candidate was not acceptable, while the use of voting machines and improved election administration made delivery harder to insure." See also Banfield and Wilson, *City Politics* 99 (1963).

[22]Felknor, *Dirty Politics* 164-65 (1965).

campaigns, American politics has become more involved with issues and less with the issueless politics of patronage, favor, and preferment. Campaigning too, has shifted from the door-to-door canvass, local rallies, and controlled blocks of votes to the mass media and advertising agencies."[23]

The total number of electors, including women, minorities and eighteen year olds, has increased to such an extent that the chances of influencing an election result through vote buying and selling today is *de minimis*.

The demise of individual vote-bartering in California perhaps is illustrated best by a parallel change in the state's liquor laws. A century ago, candidates reportedly "would round up these prospective voters like so many cattle, confine them in corrals" and "keep them in a truly magnificent state of intoxication until the eventful morning . . ."[24] This threat of liquor-bought votes doubtlessly inspired the frontier era prohibition against the furnishing of alcoholic beverages during election hours. (Cal. Bus. & Prof. Code § 25630) The modern disappearance of the threat, however, led to the law's repeal in 1969. (Cal. Stats. 1969, c. 614, p. 1253 § 1) A newspaper account suggests the reason for the repeal with the observation that:

" 'Historically, it used to be that crooked politicians would get the prospective voters drunk

[23]Banfield, *Urban Government* 381 (1969).

[24]Newmark, *Sixty Years in Southern California*, 42 (3rd Ed. 1930).

> and influence their votes,' said [counsel] for the Department of Alcoholic Beverage Control. 'Changing methods of campaigning have made the ban obsolete' . . . 'It's probably less expensive to advertise your candidate in the mass media than buy everybody a drink,' he said."[25]

The conclusion is inescapable that voting fraud is simply no longer a realistic possibility. The disfranchisement of respondents and their class therefore rests upon an imagined rather than a real state interest. The California Supreme Court considered this historical analysis of California's election laws and practices and concluded:

> "In sum, it may have been feasible in 1850 to influence the outcome of an election by rounding up the impecunious and the thirsty, furnishing them with free liquor, premarked ballots, and transporting them to the polls; to do so in 1973, if possible at all, would require the coordinated skills of a vast squadron of computer technicians."
>
> *Ramirez v. Brown, supra* at 214.

Respondents submit that the regulatory provisions now present in California's election laws are sufficient in themselves to warrant the conclusion of the California Supreme Court that total disfranchisement of ex-felons was not "necessary" within the meaning of *Dunn v. Blumstein, supra.* However, even further statutory safeguards exist.

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[25] *Los Angeles Times,* June 2, 1970.

2. Current California penal sanctions for election law violations adequately protect the electoral process.

As was determined by this Court in *Dunn*, the range of penal sanctions available to prevent election fraud can negate a state's claimed need for total disfranchisement. The California Court considered this argument and found that the State's development of penal sanctions was an adequate deterrent to election fraud and was an alternative to total disfranchisement of former felons:

> "The first election law denominated only eight offenses against the franchise, and all were punishable as misdemeanors. (Stats. 1850, Ch. 38, pp. 110-111, §§ 98-105.) Today, in sharp contrast, the Elections Code punishes at least 76 different acts as felonies, in 33 separate sections; at least 60 additional acts are punished as misdemeanors, in 40 separate sections; and 14 more acts are declared to be felony-misdemeanors. [Footnote omitted.] Among this plethora of offenses we take particular note, in the present connection, of the felony sanctions against fraudulent registrations (§ 220), buying and selling of votes (§§ 12000-12008) [Footnote omitted], intimidating voters by threat or bribery (§§ 29130-29135), voting twice, or fraudulently voting without being entitled to do so, or impersonating another voter (§§ 14403, 29430-29431), fraud or forgery in casting absentee ballots (§§ 14690-14692), tampering with voting machines (§ 15280), or ballot boxes (§§ 17090-17092), forging or altering election returns (§§ 29100-29103), and so interfering 'with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent

> the election or canvass from being fairly held and lawfully conducted.' (§ 17093). [Footnote omitted.]" *Ramirez v. Brown, supra,* at 215-16.

The California Court specifically found that the penal sanctions available to protect the elective process in California were, as this Court found in *Dunn,* "more than adequate to detect and deter whatever fraud may be feared. (405 U.S. at p. 353 . . . .)" cited at 9 Cal.3d at 216. Clearly, such a finding warrants the conclusion that the total disfranchisement of respondents is not the least burdensome method of preventing election fraud. That conclusion should be affirmed.

3. The theoretical possibility that a former felon may run for public office is not a compelling interest that warrants the complete disfranchisement of those persons convicted of infamous crimes.

Petitioners have attempted to justify the disfranchisement of those persons convicted of infamous crimes in California on the basis of California Government Code § 275. Petitioners' brief, p. 10.

California Government Code § 275 provides: "Unless otherwise specifically provided, every elector is eligible to the office for which he is an elector, and no person is eligible who is not such an elector." Thus, the argument advanced by petitioners is that if ex-felons become electors they will be eligible to run for office; that ex-felons should not run for office; and that therefore the appropriate remedy to prevent ex-felons from becoming candidates for office is to prevent them from becoming voters. The Section 275 argument was not made to the California Supreme

Court; it is obviously without merit. Even assuming there is a compelling and necessary state interest in prohibiting former felons from becoming candidates for public office, barring former felons from voting is hardly the appropriate way to achieve this end. Fully consistent with § 275, the California Legislature could simply enact a specific statute barring former felons from running for public office.[26]

4. Petitioners' contention that California's "pardon" procedures offer alternatives to respondents' suit to obtain unconstitutionally denied rights has no basis in law or fact.

Pardon (Cal. Penal Code §§ 4852.01-4852.21) is not a practical or effective device for obtaining the franchise. To become eligible for *consideration* by the Governor for a pardon, an ex-felon must (1) inform the chief of police or sheriff of the town or area in which he resides of his intention to apply for pardon, Cal. Penal Code § 4852.02(1); (2) furnish the chief of police or sheriff with his photograph, fingerprints, full information concerning his residence and occupation and "any other information concerning his conduct and manner of living which the peace officer may require" in his unlimited discretion, Cal. Penal Code § 4852.02(2); (3) "agree to submit to the super-

[26]Just as petitioner did not present any evidence to sustain her claim that former felon voting endangers the ballot box, she states in support of this point only that it would be "intolerable" (Brief, p. 10) to allow former felons to run for public office. A felony conviction is a matter of public record. The backgrounds of those who run for public office are particularly reviewed by opponents and made public for judgment by the voters. There is nothing to suggest that voters would be unable to weigh a felony conviction with the other qualifications and characteristics of future candidates for public office.

vision of the peace officer and conform to any reasonable requirements by the peace officer," Cal. Penal Code § 4852.02(3); (4) file a new notice with the appropriate peace officer if he changes his residence, together with a new set of fingerprints, photographs, information, etc., Cal. Penal Code § 4852.02(c); (5) wait for a period of time at least three years, 2 months up to a period of seven years, 2 months, during which time the applicant continues to submit to supervision and requirements of the peace officer, Cal. Penal Code § 4852.03; (6) file in the superior court an application for a court order of rehabilitation, serving a copy of the application on the peace officer and the district attorney of each county in which the applicant was convicted of a felony, Cal. Penal Code § 4852.06; and (7) secure from the court its recommendation of pardon and have it transmitted to the Governor, Cal. Penal Code §§ 4852.03 and 4852.16. Then, after the applicant has completed the three-to-seven years of this humiliating and degrading procedure, the Governor may, in his discretion, issue or refuse to issue a pardon (except that if the applicant was convicted of two felonies, the Governor cannot grant a pardon without the written recommendation of a majority of the Justices of the State Supreme Court), Cal. Penal Code § 4852.16. It is hardly surprising that during the four-year period from 1968 to 1971, only 282 pardons were granted (App., p. 21). During this same period, 34,262 men and women were released from state prisons (App., p. 21). This long, speculative and personally offensive "remedy" cannot constitute an excuse for denying the franchise to those who have

completed their court-imposed sentence of incarceration and parole.[27]

5. The restoration of the right to vote to former felons by other states indicates that California lacks a compelling interest in continuing its disfranchisement.

The absence of a compelling state interest in the exclusion of former felons from the franchise is perhaps most dramatically demonstrated by the practice of California's sister states. At present, twenty-five of the states either do not disfranchise persons convicted of a felony or infamous crime, or alternatively, provide an automatic restoration of civil rights, including the right to vote, upon completion of either sentence in prison, a parole, or a probationary period.[28]

The Uniform Act on Status of Convicted Persons (adopted today only by the State of New Hampshire) disfranchises a convicted felon only during the term

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[27]Petitioner also argues at pp. 21-24 of her brief that ex-felons may regain the franchise through "judicial" procedures (Elections Code § 350). Elections Code § 350 simply provides that one who is refused registration has a cause of action in the superior court to contest this refusal. Section 350 does not provide that former felons should be registered in such an action nor does it in any way contradict or modify the "infamous crime" prohibition in the California Constitution.

It is no remedy to tell respondents that, in the face of constitutional sections denying them the right to vote, they may go to superior court to "contest" their disfranchisement. Their only remedy, the one they employed, was to bring an action challenging the constitutional sections in question.

[28]Citations to and discussion of the pertinent state statutes are set forth in Appendix B hereto. It should be noted that at the time this action was originally filed in the California Supreme Court, 21 states automatically restored voting rights to former felons. Evidencing the modern trend in penal reform, four states have since enacted laws which restore civil rights to former felons.

of his actual imprisonment and not during any term of probation or parole; his right to vote is restored upon completion of his prison sentence no matter what the felony.[29]

Congress also has recognized the fundamental nature of the right to vote. In enacting legislation for the governing of the District of Columbia, Congress, in 1971, amended its previous disfranchising provisions to restore automatically the right to vote to former felons either upon completion of parole or a probation-type period of time. D.C.S.A. § 1-1102(7).

The trend which now finds a majority of jurisdictions automatically restoring the right to vote upon completion of parole is paralleled by present public attitudes favoring extending the franchise to persons who have paid their debt to society. The President's Commission on Law Enforcement and the Administration of Justice emphasized in its findings the necessity of "reintegrating offenders through active intervention on their behalf with community institutions" and warned against community restrictions which "lock out" the person who carries a criminal stigma. The Commission recommended the adoption of the Model Penal Code approach of automatic

[29]The Act provides in § 607-2:2(I) that: "a person sentenced for a felony, from the time of his sentence until his final discharge, may not: (a) vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or he is paroled after commitment to imprisonment, he may vote during the period of the suspension or parole . . ." § 607-a:5 provides for the restoration of the felon's right to vote or to hold future public office upon completion of service of his sentence or after service under probation or parole.

restoration of the right to vote upon completion of incarceration (App., p. 18).[30]

In the Spring of 1971, the Ford Foundation funded a study of registration and voting throughout the United States. A part of this study included a survey of attitudes toward voter eligibility. In the survey, conducted by the Education Fund of the League of Women Voters, the opinions were obtained from a representative sample of 16 categories of community organizations. Each was asked whether persons convicted of a felony and released from prison should be eligible to vote. The results were as follows:

National Association for the Advancement of Colored People	92% in favor
Labor Council Presidents	88% in favor
Youth Groups	97% in favor
Chamber of Commerce Presidents	81% in favor
American Legion Commanders	68% in favor
Non-Black Minority Groups	95% in favor
Democratic Party Chairmen	80% in favor
Republican Party Chairmen	65% in favor
Third Party Chairmen	66% in favor
County Board of Elections Chairmen	68% in favor
City Board of Elections Chairmen	83% in favor
Mayors	75% in favor
City Managers	76% in favor

[30]Similarly, the President's Commission on the Causes and Prevention of Violence concluded, after months of hearings and study of civil disorder, that denial of the right to vote tends to alienate people (particularly young people) and "to drive them into a search for an alternative, somewhat violent means to express their [feelings]." App., p. 18.

City Council President	79% in favor
Board of County Commissioners Chairmen	74% in favor
League of Women Voters	93% in favor

At least two-thirds of every group sampled felt that ex-felons should be entitled to vote (App., pp. 19-20).

Additionally, a survey recently conducted by the Secretary of State's office of all fifty-eight county clerks and registrars of voters in California indicates that the vast majority (90 percent) are satisfied with the decision of the California Supreme Court. Specifically, fifty-two of the fifty-eight county clerks and registrars of voters, representing counties which contain 97.39 percent of the registered voters of California, indicated such satisfaction.

The Secretary concluded:

> "Under the decision of the California Supreme Court, these administrative burdens are either eliminated or greatly simplified. The seriousness of the administrative burden which was imposed by the 'infamous crime' disqualification provision is confirmed by the aforementioned survey of county election officials which indicated widespread support for the decision of the California Supreme Court.
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> "In light of the administrative considerations stated above, the 'infamous crime' voting disqualification can only be justified, if at all, on grounds of general policy. It is doubtful, however, whether the state can demonstrate either a compelling or rational policy interest in denying

former felons the right to vote. The individuals involved in the present case are persons who have fully paid their debt to society. They are as much affected by the actions of government as any other citizens, and have as much of a right to participate in governmental decision-making. Furthermore, the denial of the right to vote to such persons is a hindrance to the efforts of society to rehabilitate former felons and convert them into law-abiding and productive citizens." Memorandum Opposing Certiorari in *People of Calif. v. Ramirez,* U.S. Sup. Ct., No. 73-324.

6. The Individual Respondents.

The plight of the individual respondents herein was noted by the California Supreme Court in *Ramirez v. Brown* and demonstrates the difficulty of drawing inferences of unfitness from the mere fact of a felony conviction. 9 Cal.3d at 202.

Respondent Abran Ramirez was convicted of one felony, robbery by assault, in 1952, and was incarcerated for three months thereafter. This offense by its very nature need not be the act of a habitual criminal, but rather suggests the act of a moment's impulse. Moreover, the actual three month sentence on what appears to be a serious charge suggests the presence of mitigating factors. Now, more than twenty years later, Mr. Ramirez has moved to another state, become a family man, a farm laborer and a union member, desirous of exercising his full voice as a citizen. (App., p. 6).

Respondent Albert Sang Lee was convicted of possession of dangerous drugs in 1955; he served a

two-year prison term on this offense and upon his parole led an exemplary life for the ensuing 15 years. His offense involved no harm to other persons and no contempt for the electoral process. His parole successfully terminated 15 years ago. Even if the conviction were slightly probative of Mr. Lee's fitness to vote in 1955, it is certainly of no probative value in 1973. (App., p. 7).

Respondent Larry Gill was convicted of forgery in 1957 and burglary in 1952 and 1967; all offenses admittedly were committed in an effort to support a narcotics habit. Mr. Gill has successfully ended his addiction and is now employed full time. (App., p. 7). In his declaration (*Record,* Exhibit C to Petition for Writ of Mandate) Mr. Gill stated: "Now that I'm not against society, not preying on society, and I'm standing on my own two feet, voting is a right I should have. If I can vote, my past won't be my present. My present should be my present. The state won't let it rest, you pay forever. We should be entitled to this reward; an ex-felon has to work harder to earn it than anyone else."

The question today is whether any inference of unfitness can be drawn from simple status to show that ex-felons as a class are more likely than not to constitute a threat to the integrity of the electoral process. Clearly, neither respondents as individuals nor former felons as a class have been shown by the state to share visible traits of unfitness for electoral participation.

Indeed, if it can be demonstrated that former felons share any trait as a class it is not their susceptibility to voting fraud but their disproportionate derivation from the ranks of racial minorities and the poor. Nearly half the former felon population in California is non-white,[31] a figure twice their ratio in the general population.[32] This two-to-one disparity matches the statistic that minority group defendants in a Los Angeles study were twice as likely to receive sentences of 12 months or more than were white defendants.[33] An ex-felon is very apt to be poor. Practically all ex-felons, by definition, are indigent at the time of their release from prison. More than 75% of all former felons are indigent.[34] In eliminating former

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[31] *Characteristics of Male Felon Population in California State Prisons*, December 1971 (Research Division, State Department of Corrections). 51.1 percent of the population is White, 30.8 percent Black, 16.5 percent of Mexican descent, and 1.6 other non-White.

[32] *General Population Characteristics, California*, Bureau of the Census Reports, 1971, Table 18 and App. A, shows California's ethnic composition as 73 percent White, 7 percent Black, 16 percent of Mexican descent, and 4 percent other non-White.

[33] Lemmert and Rosberg, *The Administration of Justice to Minority Groups in Los Angeles County* (Univ. of Calif. Press, 1948). The study indicates that 11.5% of Black defendants, 17.6% of Mexican-American defendants, but 43.2% of White defendants, received sentences of less than 9 months; 65.3% of Black defendants, 35.3% of Mexican-American defendants, but only 29.7% of White defendants received sentences of more than 12 months.

[34] Of all former felons in Washington, D.C., in 1965, 90% had income below $5,000 annually, Wallsch, *A Description of Active Juvenile Offenders and Convicted Adult Felons in the District of Columbia, Vol. II*, Stanford Research Institute (1966) at pp. 9, 15, 48, 52, 53. A study of those ex-felons having full employment in Boston, Mass., showed 78% having income below $5,200 annually, Bing and Rosenfeld, *The Quality of Justice in the Lower Criminal Courts in Metropolitan Boston: Report to the Governor* (1970) at 125.

felons, the current voter registration practice clearly disproportionately affects racial minorities and the poor.

Thus the record reveals no compelling state interest for the exclusion of former felons from voting. The plethora of criminal sanctions for voter fraud and the present operation of the California voting process protects against any danger of fraud. If there is any state interest involved, it is the interest of restoring human beings who have paid their debt to society to the personal dignity and position in a democratic society which necessarily includes the right to vote.

II

THE PENALTY PROVISIONS OF SECTION 2 OF THE FOURTEENTH AMENDMENT DO NOT EMPOWER THE STATES TO ABRIDGE THE RIGHT TO VOTE IN A MANNER WHICH VIOLATES THE EQUAL PROTECTION CLAUSE OF SECTION 1

A. This Court Has Declined to Give Weight To The Contention That Section 2 of the Fourteenth Amendment Somehow Affects or Controls The Ambit of the Equal Protection Clause As it is Applied to The Right to Vote.

The Constitutional standards of *Dunn* and its forerunners have not been directly disputed by petitioner in this Court or before the California Supreme Court. Rather, petitioner argues that, even if it be conceded that there is no compelling interest in California for disfranchising former felons, California may nevertheless deny the right to vote to ex-felons because of the language of Section 2 of the Fourteenth Amend-

ment to the United States Constitution. Section 2 of that Amendment provides for reduction of representation in the Congress when a state denies the franchise to 21-year-old male inhabitants of the state, "except for participation in rebellion or other crime." In support of her Section 2 contention, the Mendocino County Registrar states at page 15 of her Brief, "It has been consistently acknowledged by the U.S. Supreme Court that the states may disenfranchise for crime," citing *Davis v. Beason,* 133 U.S. 333 (1890); *Trop v. Dulles,* 356 U.S. 86 (1958); and *Lassiter v. Northhampton County Board of Elections,* 365 U.S. 45 (1959).

Reliance upon these three cases is misleading. Nowhere in the text of the decision in *Davis v. Beason, supra,* is Section 2 of the Fourteenth Amendment even mentioned. Nor did the case deal with ex-felon voting. Mr. Justice Field begins the opinion of the Court with the following statement:

> "On this appeal our only inquiry is whether the district court of the territory had jurisdiction of the offense charged in the indictment, of which the defendant was found guilty [Registering to vote although a Mormon]. If it had jurisdiction we can go no further. We cannot look into any alleged errors in its rulings, on the trial of the defendant. The writ of habeas corpus cannot be turned into a writ of error to review the action of that court." 133 U.S. at 341.

In fact, *Davis, supra,* dealt with an Idaho territorial statute denying the right to vote to bigamists or polygamists who taught or counselled others to become

bigamists or polygamists. The Court considered whether an act of Congress also dealing with polygamists voting conflicted with the territorial statute, and held that it did not. Petitioner has misconstrued the case with the aid of four ellipses eliminating all reference to polygamy and bigamy, while leaving in statutory sections not in fact under consideration by the Court.

Trop v. Dulles, 356 U.S. 86 (1958), the second case relied upon by petitioner for the proposition that this Court has "consistently acknowledged that states disenfranchise for crime," also makes absolutely no reference to Section 2 of the Fourteenth Amendment. *Trop, supra,* involved a statute that prescribed loss of citizenship as punishment for conviction by court-martial of wartime desertion. This Court held that the statute violated the Eighth Amendment to the United States Constitution.

In the third case, *Lassiter v. Northampton County Board of Elections,* 365 U.S. 45 (1959) this Court upheld a North Carolina statute and constitutional provision that made literacy a voter registration prerequisite. Section 2 of the Fourteenth Amendment is mentioned in the opinion but was cited only for the proposition that the "right to vote" is not absolute and may be, within reason, regulated by the states.[35]

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[35]The Court mentioned "previous criminal record" along with "age" and "residence requirement" as examples of matters which in 1959 were typical state limitations on the right to vote. It should be noted that *Davis, Trop,* and *Lassiter* were all decided prior to the enunciation by this Court of the fundamental nature of the right to vote and the compelling interest test. Subsequent decisions

365 U.S. at 51. This Court made no holding or comment whatever concerning the impact of Section 2 on persons disfranchised for criminal convictions.

In *Oregon v. Mitchell,* 400 U.S. 112, 152 (1970); *Carrington v. Rash,* 380 U.S. 89, 97 (1965); and *Reynolds v. Sims,* 377 U.S. 533, 589 (1964) Mr. Justice Harlan, dissenting, urged that this Court give Section 2 the almost identical construction now urged by petitioner.

In each case this Court did not do so. In fact, the Court in *Oregon* upheld a federal law passed pursuant to the equal protection clause of the Fourteenth Amendment preventing the states from denying the franchise in federal elections to those persons eighteen years of age despite the specific language of Section 2 stating that no penalty shall be suffered by the states for denial of suffrage to persons under twenty-one years of age.

Mr. Justice Brennan, concurring in part and dissenting in part in *Oregon v. Mitchell, supra,* explicitly rejected the Section 2 argument holding that Section 2 was intended as no more

> "than a remedy supplementary, and in some conceivable circumstances indispensible to other congressional and judicial remedies available under Sections 1 and 5,"

and that to hold otherwise

> "would appear to allow a state to exclude any unpopular group from the political process solely

in *Oregon v. Mitchell, supra,* and *Dunn v. Blumstein, supra,* have altered the permissibility of various age and residence requirements.

upon the basis of its political opinions." 400 U.S. at 252, N. 34.[36]

[36]Petitioner states at the outset of her argument that "disfranchisement of ex-felons has been *universally* approved in the federal courts". Brief at p. 6 (Emphasis Added). Her argument then goes on to cite the case of *Stephens v. Yeomans*, 327 F. Supp. 1182 (D.N.J. 1970), which held directly contra. In *Stephens*, a three-judge federal court struck down New Jersey's disfranchising provisions.

Petitioner further argues that the four federal courts in *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972), Aff'd *per curiam* 411 U.S. 961 (1973); *Kronlund v. Honstein*, 327 F. Supp. 71 (N.D. Ga. 1971); *Beacham v. Braterman*, 300 F. Supp. 182 (S.D. Fla. 1969), Aff'd *per curiam* 396 U.S. 12 (1969); and *Green v. Board of Elections of the City of New York*, 380 F. 2d 445 (2d Cir. 1967), correctly upheld state disfranchising laws under § 2 of the 14th Amendment to the U.S. Constitution.

Petitioner has stated at page 12 of her brief that *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972) "appears to be on all fours with the position of Petitioner Richardson and virtually in direct conflict with the decision of the California Supreme Court below." In fact, this contention is incorrect. This Court in *Fincher v. Scott*, ... U.S. ....., 93 S.Ct. 2151 (1973) rejected a challenge to state disfranchisement of presently incarcerated, convicted felons, Jurisdictional Statement, O.T. 1972 No. 72-1334 at 6, 7, 18, 20. The decision by the California Supreme Court was specifically limited to those former felons whose terms of incarceration and parole had already expired. *Ramirez v. Brown*, 9 Cal. 3d at 217, N. 18 (1973).

In *Kronlund v. Honstein*, 327 F. Supp. 71 (N.D. Ga. 1971), a Federal District Court upheld Georgia's disfranchising laws. The Court, however, did not discuss the constitutional standard to be used when testing voting restrictions but merely jumped from an initial observation that "a state has an interest in preserving the integrity of her electoral process" to the conclusion that "[T]herefore, Georgia has a compelling state interest sufficient to justify the voting restrictions . . . of the Georgia Constitution." 327 F. Supp. at 73.

The Court in *Kronlund* attempted to distinguish *Stephens v. Yeomans, supra*, by citing the New Jersey Court's finding that the development of New Jersey's disfranchising laws had produced "remarkable contrasts in treatment of ex-felons that did not exist in Georgia." 327 F. Supp. at 74. Respondents submit that *Stephens* is directly applicable to the facts at hand. A "haphazard scheme" of disfranchisement did exist in California prior to the decision below. *Kronlund* is therefore inapplicable under its own reasoning. 327 F. Supp. at 74.

In *Green v. Board of Elections of the City of New York*, 380 F. 2d 445 (2d Cir. 1967) the Court applied the "rational basis" test in holding constitutional the disfranchisement of "a convicted

B. The Legislative History to Section 2 Fails to Support Petitioner's Suggested Interpretation.

When the 39th Congress debated the Fourteenth Amendment at the conclusion of the Civil War, the Republican party was dominant in both Houses. Foremost among Republican objectives was assuring that the new representational power resulting from the abolition of slavery did not increase the Congressional representation of Southern Representatives loyal to the Confederacy.[37] Republican leaders believed they could accomplish this objective either by reducing Southern representation in Congress to off-set the projected increase in the South, or by enfranchising the emancipated Negro voters who were deemed likely to vote the Republican ticket.[38]

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mafiosi." 380 F. 2d at 448. *Green* was decided prior to this Court's decisions in *Kramer, Cipriano, Evans, Kolodziejski, Bullock* and *Dunn*. Moreover, in *Beachum v. Braterman*, 300 F. Supp. 182 (S.D. Fla. 1969) the District Court, in a two page opinion, did not consider the equal protection argument set forth by the California Supreme Court in *Ramirez v. Brown*. Instead, it based its conclusions on an unanalyzed quotation from *Green* and considered the case to be a challenge to the discretionary exercise of the Governor's pardon power. *Beachum* at 183-184. It is thus not dispositive of the issues herein.

[37]The Report of the Joint Committee on Reconstruction repeats concerns "whether conquered rebels may change their theater of operation from the battle-field, where they were defeated and overthrown, to the halls of Congress, and, through their representatives seize upon the government which they fought to destroy." "Report of the Joint Committee on Reconstruction," *H. R. Rep.* No. 30, 29th Cong., 1st Sess. (1866), at xx; Bonfield, "The Right to Vote and Judicial Enforcement of Section Two of the Fourteenth Amendment," 46 *Corn. L.Q.* 108, 109 (1960); Flack, *The Adoption of the Fourteenth Amendment* 98, 126 (1908); Van Alstyne, "The Fourteenth Amendment, The 'Right' to Vote and the Understanding of the 39th Congress", 1965 *Sup. Ct. Rev.* 33, 44.

[38]Bonfield, *supra*, at 109; Kendrick, *Journal of the Joint Committee of Fifteen on Reconstruction* at 290, 291; James, *The Framing of the Fourteenth Amendment* (1956); Remarks of Rep. Stevens, *Cong. GLOBE* 39th Cong., 1st Sess. 2466 (1866) (hereafter *GLOBE*).

Republican objectives met two impediments. First, universal Negro suffrage, which could not be assured without its incorporation into the Fourteenth Amendment, was unacceptable in many parts of the North and if adopted might create a Northern reaction against Republicans.[39] Second, disfranchisement of ex-Confederates generally was not conceived as permanent, but rather to last only so long as necessary for each ex-Confederate voter to return his allegiance back to the Union.[40] Thus, the penalty provisions of Section 2 emerged to satisfy the Northern Republicans' diverse objectives.[41]

Sections 1 and 2 of the Amendment were not introduced and discussed in the Reconstruction Committee as a single text. Rather, § 2 was originally approved by the Joint Committee and reported to the House on January 22, 1866, as H.R. No. 51, a wholly separate constitutional amendment. It was debated at length and approved by the House in its original form before the proposal that ultimately became § 1 was even reported to the House, on February 13. It was debated at equal length in the Senate in February and March of 1866, nearly two full months before it reappeared

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[39]Kendrick, *supra*, at 291; Flack, *supra*, at 111, 118; Zuckerman, *supra*, at 93, 94 (1961).

[40]James, *The Framing of the Fourteenth Amendment*, 138, 139 (1956), *GLOBE*, at 2537, 2540, 2543, 2770.

[41]"Report of the Joint Committee on Reconstruction," *supra*, xiii; Van Alstyne, *supra*, at 58, 65; James, *supra*, at 185; Bonfield, *supra*, at 111. The "rebellion or other crime" language did not appear in early drafts of Section 2; it was apparently added to Section 2 so that border states which had disfranchised large numbers of rebels would not suffer loss of Congressional representation as a result. Kendrick, *supra*, at 223; Zuckerman, *supra*, at 101.

in the Joint Committee's Report of April 30 as part of the packaged Fourteenth Amendment. In the course of its consideration, the issue of "preemption by implication" was fully discussed. While the possibility of such an implication disturbed and alienated a number of Radicals otherwise sympathetic to the limited objective of the proposal, the existence of any such implication was emphatically denied by both the House and Senate chairmen of the Joint Committee that reported the bill. Far from being a single text the several parts of which were carefully and deliberately integrated by men of a common mind and a mutual understanding of the implications and interrelationships of the several sections, the Fourteenth Amendment was a package of proposals, the more significant of which were pieced together from independent bills offered by different men at different times and originally debated in Congress as wholly separate amendments. Indeed, the brevity of the three-day House debate on H.R. No. 127, the packaged Fourteenth Amendment bill, is probably attributable to the fact that its most significant components had previously been considered at length. A more accurate description of the placement of § 2 in the Fourteenth Amendment is that "[i]t became a part of the Fourteenth Amendment largely through the accident of political exigency rather than through the relation which it bore to the other sections of the Amendment."[42]

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[42]Van Alstyne, "The Fourteenth Amendment, The 'Right' to Vote and the Understanding of the 39th Congress," 1965 Sup.Ct. Rev. 33, 43-44.

Mr. Justice Brennan, in *Oregon v. Mitchell, supra,* (dissenting in part and concurring in part), noted how the historical environment to the adoption of the Fourteenth Amendment was characterized by "a noticeable lack of precision" and a "tendency toward irregularity . . . in legislation, and in legal interpretation and that the framers of widely divergent views papered over their differences with a broad, elastic language of Section 1 and left to future interpreters of their Amendment the task of resolving in accordance with future vision and future needs the issues that they left unresolved." 400 U.S. at 252, 274-75.

III

THE ARBITRARY AND DISCRIMINATORY APPLICATION OF CALIFORNIA'S VOTING LAWS PRIOR TO THE DECISION BELOW WAS IN ITSELF VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

This Court has consistently recognized that discrimination in voting resulting from geographic inequities is subject to challenge under the equal protection clause of the Fourteenth Amendment. *Gordon v. Lance,* 403 U.S. 1, 4 (1971); *Reynolds v. Sims,* 377 U.S. 533, 565-66 (1964); *Gray v. Sanders,* 372 U.S. 368, 379 (1963).

Prior to the decision in *Ramirez v. Brown,* California's 58 County Clerks and Registrars of Voters decided which crimes were "infamous" under the California Constitution as interpreted in *Otsuka v.*

Hite, 64 Cal.2d 596 (1966). Thus county-to-county variances arose in the disfranchisement of ex-felons.[43]

A chart setting forth the results of a survey taken by California's Secretary of State in 1972 (App., pp. 33-40) indicates the following clear examples of the geographical disparity in the application of California's election laws that existed at the time respondents petitioned the California Supreme Court for relief: Five counties register a person convicted of murder but six do not; eight counties register in spite of a robbery conviction and seven do not; four register for grand theft and five do not; ten register for burglary but three do not; four register for obtaining by false pretenses and two do not; six register for bad checks but four do not; four register for mail fraud and three do not; four register for absconding with public funds but two do not; four register for desertion and three do not; nine register for selling narcotics and five do not.

Thus, the total lack of uniformity in the application of California's election laws had resulted in the choice of a county of residence being the deciding factor in the success of respondent's efforts to register to vote.[44]

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[43]At the time of the Secretary of State's survey, petitioner Viola Richardson, Mendocino County's Registrar, had no written guidelines for determination of which former felons were eligible to register. An ex-felon who attempted to register was told to make an appointment to discuss his case with the local district attorney. (*Record,* Exhibit "D" to Petition for Writ of Mandate.)

[44]Similarly, intra-county classifications defy rational analysis. Santa Barbara County, for example, registers for auto theft but not for arson; San Joaquin for burglaries but not for grand theft; San Diego for smuggling but not for mail fraud; Sacramento for embezzlement but not forgery; San Bernardino for child molesting

In oral argument before the California Supreme Court the California Attorney General candidly admitted that this lack of uniformity violates the Constitution:

> "I think there's no question that you have the geographic denial of equal protection on that ground. I think we have to admit that. Just based on what the factual situation is at the moment, and it's an unfortunate situation when you get a county, Los Angeles, for example, I believe it is, says that somebody who commits statutory rape, they can't vote and somebody commits rape they can . . . And they [Los Angeles] said, we feel that somebody is charged with possession of marijuana, under the State law, that's an infamous crime, but if it's under the Federal law it's a tax case and it's really not an infamous crime. . . . I said, 'Well, what do you mean?' And the attorney said to me, well, he said—I said don't you realize as a practical matter when somebody gets sent to the Federal Penitentiary on a marijuana deal it's a big deal, it's not a little deal? And he said, I know, but we have to have some distinction, and I think the distinction they make was just—to me it was too legalistic (Appendix A, pp. 4-5)."

Furthermore, the Secretary of State has articulated to this Court the administrative inequities that existed in California:

> "Prior to the *Ramirez v. Brown* decision, each county had to determine for itself which convic-

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but not prostitution; Riverside for forgery but not for public embezzlement; Orange for rape but not robbery; and Los Angeles for forcible but not statutory rape.

tions would be grounds for disenfranchisement from voting. Once such a determination was made, it had to be implemented by the county clerk's office and by thousands of deputy registrars of voters, who usually are private citizens who register voters on a part-time basis. Since deputy registrars were frequently unable to decide individual cases, questionable voters were generally referred to the county clerk's office. The 'infamous crime' voting disability thus made the process of registering voters more complicated and undoubtedly discouraged some qualified electors from registering to vote." Memorandum Opposing Certiorari in *People of Calif. v. Ramirez,* U.S. Supreme Ct. No. 73-324.

The California Constitutional and statutory provisions by their terms deny the right to vote only to those felons who have been convicted of "infamous crimes." However, since the language of this disqualification is clearly not susceptible to uniform application throughout the State and instead results in irreconcilable differences amongst counties, the disfranchising provisions may be stricken down on that ground alone.

This unbridled discretion vested in county registrars is of the sort that has long been prohibited by this Court. In *Louisiana v. United States,* 380 U.S. 145, 150 (1965) this Court affirmed a lower court holding that a Louisiana voting test was unconstitutional when it "vested in the voting registrars a virtually uncontrolled discretion as to who should vote and who should not." 380 U.S. at 150. Justice Black's language in that opinion is appropriate here:

"The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar." 380 U.S. at 153.

CONCLUSION

For the foregoing reasons respondents submit that the judgment of the California Supreme Court below should be affirmed.

Dated, December 20, 1973.

Respectfully submitted,

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(Appendices A and B Follow)

Appendix A

In the Supreme Court
of the State of California

Abran Ramirez, etc.
Petitioners,
vs
Edmund G. Brown, Jr., Secretary of State of the State of California, et al.,
Respondents.

HEARING ON PETITION FOR WRIT OF MANDATE

Monday, February 5, 1973

For Petitioners:
Burton D. Fretz, Esq., et al.

For Respondents:
George J. Roth, Esq.,
Deputy Attorney General

Mr. Roth: May it please the Court I represent the Secretary of State in this matter and it's an unusual case because of the nature of the case the Attorney General has an interest in it. However, as indicated by our pleadings our interests are very close together. The Attorney General is particularly careful and wants to point out to the Court the difference in the

pleadings and the Secretary of State has responded in that matter to exclude prisoners from this State who are serving terms or who are on parole. The petitioners have excluded those people from their pleadings and it may be that that is the subject of another lawsuit. We feel very strongly that based on the pleadings in this case at this time there's nothing before the Court relating to prisoners in prison or on parole.

The Court: Mr. Roth that would mean that you would say that the first alternative offered by the Petitioner was one we shouldn't consider then.

Mr. Roth: Well——

The Court: Which he included in his class——

Mr. Roth: Yes. By his pleadings I don't see he can get to that alternative.

The Court: However that wouldn't affect his second alternative as I understand it, which would be those that were under conviction, incarcerated or on parole would be——

Mr. Roth: Well, I believe he excludes those. And basically we start with the idea that prisoners in prison and on parole are put there for punishment purposes, but they may be for rehabilitation or punishment, but we start with the idea that somebody is sent to prison as punishment for a crime, hopefully they'll be rehabilitated and during this period one of the punishments is the deprivation of civil rights. We feel very strongly that the State has a compelling interest and also a reasonable relationship to the end to be achieved. We think we meet all the tests insofar as people in prison or on parole are concerned.

Mr. Roth: We're not talking about people in county jails waiting to be sentenced or serving misdemeanor sentences. Those people can vote. They vote right now, as far as we know. It it's called to our attention, we advise people that prisoners in county jails have a right to vote.

The Court: Mr. Roth, what about the person who is convicted in the trial court and has the matter on appeal? Would he be excluded or not?

Mr. Roth: It's a question of where do you have a judgment? If he's in prison I believe that you have to exclude him, Your Honor, as far as the punishment. He's still serving sentence—it's part of his sentence.

The Court: I'm talking about the man who hasn't gone there.

Mr. Roth: Well, still until he goes to prison I think you have a different problem. Uh——

The Court: It's hard to define, Counsel.

Mr. Roth: Very hard, Your Honor.

The Court: Because frequently, as you well know, the county jails are filled with individuals who have been convicted of felonies and who as a condition of probation may be serving time on the county level.

Mr. Roth: That's true. If it's probation we're talking about, then we feel that that person can vote.

The Court: Now, even though he has been convicted of what at one time might have been thought to be an infamous crime——

Mr. Roth: Well——

The Court: ——a felony, of a certain type.

Mr. Roth: Let me put it this way, Your Honor. That if—the Attorney General, and that means Secretary of State agree in this principle; They agree with the petitioners to this extent. That if the person has been in prison, has served his term in prison and has completed his parole, that possibly except for election code felonies, and really they're de minimus as I understand it—there hasn't been one in many, many years that we know of—but at any rate, that the people who are finished with the particular sentence altogether, that if they should vote is a matter for the Legislature to decide. That's our position. That's the Secretary of State's position. The big problem we see here was to try and define in the case the justiciable issue before this Court when we framed our pleadings, because we, I guess, came up with almost an amicus brief that's really asking the Court for declaratory relief, to tell us and to tell everybody in the State what infamous crime means.

The Court: I assume that's because each county has interpreted it differently.

Mr. Roth: I think there's no question that you have the geographical denial of equal protection on that ground. I think we have to admit that. Just based on what the factual situation is at the moment, and it's an unfortunate situation when you get a county, Los Angeles for example, I believe it is, says that somebody who commits statutory rape, they can't vote and somebody commits rape they can, and I suppose the theory is that statutory rape there's some chicanery or deceit connected with it with a young

girl and I talked to the County Counsel's office and I had to write an opinion, the Court's probably familiar with it, it's in 53 Cal. App., it's on the Otsuka case, and frankly I read Otsuka I guess 27 times and I rewrote the opinion 13 times to try and figure out what to say. But, I talked to the County Counsel's office at Los Angeles who has done more research on it than anybody, and I said "How do you come to this conclusion, what is meant by an infamous crime? And they said, well, we feel somebody is charged with possession of marijuana, under the State law, that that's an infamous crime, but if it's under the Federal law it's a tax case and it's really not an infamous crime it's—— (Laughter)

I said, "Well, what do you mean?" And the attorney said to me, well, he said—I said don't you realize as a practical matter when somebody gets sent to Federal Penitentiary on a marijuana deal it a big deal it's not a little deal? And he said, I know, but we have to have some distinction, and I think the distinction they make was just—to me it was too legalistic.

The Court: In view of the State's inability to define an infamous crime, how can it show a compelling interest that those persons allegedly convicted of it should be kept from voting?

Mr. Roth: I——

The Court: In other words, the burden lies with the State, doesn't it?

Mr. Roth: Your Honor, I think the problem is this: That you said in view of the State's inability to define the crime, and I think the problem is that

the crime has not yet been defined. There is inability to define it and whether this Court does it or the Legislature does it, somebody should do it, and I think it can be done and possibly, and I say this with reservations because I'm not sure—I've read the Federal Cases and I've read many of the State cases—and I suppose in certain instances the State may be able to show a compelling State interest in a rational means for the end, if it's defined.

The Court: Of course the Legislature has now had seven years in which to do it.

Mr. Roth: Well——

The Court: Since Otsuka——

Mr. Roth: Well, now—that's true, Your Honor, however they now have the Constitutional mandate to do it, because they didn't have that before. All they had was this Court's suggestions——

The Court: Do you find justice, do you find some significance in the Constitutional change?

Mr. Roth: I think so, Your Honor, very much.

The Court: What significance?

Mr. Roth: Number one, the constitutional change took the word "ever" out which under the old constitution meant, as I read it, that once somebody was convicted of an infamous crime, for ever after they would be disenfranchised unless they in effect has a pardon from the Governor. You pointed out in Otsuka that if they went through a 350 Election Code, 350 rehabilitation proceeding to prove their rehabilitation they could vote. That modified the law somewhat. But it still said forever. That was taken out

of the constitution and the constitution now specifically says the Legislature shall enact laws to or in effect enabling legislating to carry out this policy and I think that the Legislature has this mandate. The Court may not want to wait for the Legislature to do it.

The Court: Well, are you suggesting then that any statutes on the books prior to the constitutional amendment are invalid because not re-enacted?

Mr. Roth: No, no. I believe that what's on the books is enabling legislation. But when you look at the statutes that talk about striking votes for infamous crimes, it's a problem. It's still there, we still have the problem.

The Court: I find it difficult to find any significance in the omission of the word "ever."

Mr. Roth: Well to me that's the most important part of the change, Your Honor.

The Court: It seems to be a matter of semantics. The original constitution provision didn't have the word in and it was subsequently added, and now it's omitted. It looks to me like it's just a semantical——

Mr. Roth: Well, it's hard to tell and it's really to impute the knowledge of what the change meant to the voters because it was done in the Legislature and really this is not legislation but the people voting, it's different and so whether or not we can impute the change to the desire of the people to make the change is questionable, I agree. But you have problems—all we're asking is help from the Court so the people know what infamous crime is.

I'd like to get back again, if I may, to the question of the prisoners in prison or on parole. Because really that is what interests us, it interests the Secretary of State, it interests the Attorney General more. Now I have a client and I'm his lawyer, and I guess there's a fine line in the lawyer-client relationship that I hopefully trying very delicately but honestly, and within the framework of the Code of Ethics. And the Attorney General is very much interested in being certain that the prisoners in prison and on parole do not vote. There's a tremendous amount of problems. What I'm alluding to, the City of Folsom in order, in the newspapers, get a tax advantage of some time as I understand it, annexed Folsom Prison and it may backfire on them if the prisoners are allowed to vote. But here's what happened—(Laughter)

If the prisoners in Folsom Prison are permitted to vote, then they vote for the City Council of the City of Folsom they will in effect control who the police chief is and under our system of administration of justice in California, the local agencies are the ones who investigate the crimes in the prisons. When a crime occurs in San Quentin the District Attorney's office over in Santa Rosa I guess it is goes in and investigates it. The Sheriff investigates it. And if you had prisoners in San Quentin Prison voting and saying that they're residents of that County they could elect their own sheriff and their own District Attorney, it would be a great thing. You have administrative problems.

The Court: Are they counted in the population in the census polls?

Mr. Roth: I don't think San Quentin is at the moment, but you never know when somebody is going to annex them, Your Honor. They did it in Folsom——

The Court: Well, if they get the benefits why shouldn't they have the detriments?

(Laughter)

Mr. Roth: But the—there's other problems. There's many administrative problems that I can see. For example supposing that this Court was to say that prisoners in prison could exercise their franchise in any election in this State and somebody said—they might say, well they wouldn't have to set up polling booths, they could vote by absentee ballot. Well, I could forsee immediately that question of denial of equal protection, because they would say well the League of Women Voters has no right to come in and present their candidates night in our prison and the candidates can't come through and shake hands with—we don't get to meet the candidates, we don't have the same knowledge that the rest of the voting population has.

The Court: Mr. Roth, isn't this really a straw man that you're building up here? The members—the Petitioners here are not prisoners and the class of which they are members do not include prisoners or parolees, they're all out, they served their time, one of them 18 years ago——

Mr. Roth: Your Honor, that's the greatest thing I've heard today. Because as long as the Court feels that way, I'll stop.

The Court: Well, I'm not thinking for any of my colleagues——

Mr. Roth: If the Court has any further questions.

The Court: I think not. Thank you.

Mr. Roth: Thank you, Your Honor.

Appendix B

The following states provide for either no disfranchisement of ex-felons or automatically reinstate those persons whose terms of incarceration, parole or probationary periods have ended.

1. *Arkansas,* seemingly, has repealed its disfranchising provision. The Arkansas Constitution delegated to the Legislature the power to deprive convicted felons of the right to vote. Ark. Const. Art. 3, § 1. But in 1969, the entire Arkansas Election Code, containing a disfranchising provision, was repealed. Ark. Stat. Ann. § 3-101 (1956). The law replacing it no longer excludes ex-felons. Ark. Stat. Ann. § 3-707 (Supp. 1971).
2. *Colorado* excludes those persons serving on sentence but automatically restores "all rights of citizenship" upon release. Colo. Const. Art. VII, § 10, C.R.S. 49-3-2(1).
3. *Delaware* disfranchises those persons who are convicted of a felony. Delaware Constitution Art. V, § 2. However, 15 Del. C. § 1701 automatically restores the right to vote to all former felons, even those convicted of an election code felony, 10 years after conviction and sentence.
4. *Hawaii* previously had a "felony" prohibition, Hawaii Const. Art. II, § 2, but in 1968 amended its constitution to restore the right "upon his final discharge." Hawaii Const. Art. II, § 2. H.R.S. § 716-2.
5. *Illinois* also prohibits those "under sentence" but restores an ex-felon's right to vote "not later than upon completion of his sentence." Ill. Const. Art.

3, § 2. Ill. Ann. Ch. 46, § 3-5 requires the Illinois Department of Corrections to supply to a released person a certificate that is to be presented upon registering to vote.

6. *Indiana* grants its Legislature the power to "render ineligible any person convicted of an infamous crime." Indiana Const. Art. 2, § 8. But the Legislature has seemingly limited this disfranchisement to "the period of such imprisonment." Burns Indiana Stat. Code Edition 3-1-21-4, § 29-4804.

7. *Kansas* has retained its constitutional prohibition upon a "felony" conviction, Kansas Const. Art. 5, § 2, but restores "all civil rights" when a prisoner is discharged from prison upon serving his term or when the parole board releases him from parole and grants him a certificate of discharge. Kansas Stats. Ann. 22-3722.

8. *Maine's* Constitution at Article II, § 1, disfranchises only those "under guardianship for reasons of mental illness." Seemingly, no disfranchisement exists for convictions of crime.

9. *Massachusetts'* Constitution, Part I, Article IX, gives the Legislature the power to set qualifications. The Legislature has done so and prescribes only one pertinent disability—"being temporarily or permanently disqualified by law because of corrupt practices in respect to elections." Mass. Stats. Ann., Chapter 51, § 1, 1A.

10. In *Michigan*, the Legislature also is given the power to exclude persons who have been committed to a penal institution. Mich. Const. Art. 2, § 2. But the Legislature seems not to have so chosen because the pertinent statute, Mich. Laws

Ann. § 168.10, defines a "qualified elector" as any person who possesses the qualifications prescribed in Article 2, § 1 of the Constitution, wherein there are no relevant disqualifications.

11. *Minnesota* excludes those convicted of "bribery, perjury, or any other infamous crime," Minn. Const. Art. 4, § 15, but restores the right to vote, at the latest, "upon expiration of sentence." Minn. Stats. § 609.165 (1).

12. While *Missouri* disfranchises persons convicted of a felony or an election crime, Missouri Const. Art. 8, § 2, its statutes provide mandatory restoration of civil rights upon release from parole in all cases of first conviction of a felony. Mo. Stats. § 216.355(3).

13. *Montana,* in 1972, held a constitutional convention which adopted new Article IV, § 2 (ratified June 6, 1972). That Article provides that "any citizen . . . is a qualified elector unless he is serving a sentence for a felony." No other disfranchisement for crime appears. See also Mont. Stat. § 23-2701(2).

14. *Nebraska*—While Article VI, § 2 of Nebraska's Constitution disqualifies those persons convicted of treason or felony, a Nebraska statute requires the Board of Parole to issue a certificate of discharge upon completion of sentence or parole; which certificate "shall restore civil rights." Nebraska Stats. § 83-1, 118(4).

15. *New Hampshire* limits its exclusion to persons convicted of "treason, bribery, or any willful violation of the election laws of this state." New Hamp. Const., Part I, Art. 11, but allows restoration upon completion of sentence while on parole

or probation for any felony." N.H. Rev. Stats. Chapter 607-A. (This is the Uniform Act on Status of Convicted Persons; New Hampshire is the only state to have yet adopted it.)

16. *New York* excludes those convicted of "bribery or of any infamous crime," N.Y. Const. Art. 2, § 3. But in June of 1973, New York amended its statutory exclusion to allow those persons whose maximum sentence of imprisonment has expired, or those who have been discharged from parole to vote. 17 McKinney Laws § 152.

17. *North Carolina* provides for disfranchisement of all persons judged guilty of a felony. N.C. Const. Art. VI, § 2. However, in 1973, North Carolina's Legislature enacted a statute providing that whenever an inmate is formally discharged from prison or a parolee is discharged from parole he "shall" be restored to all rights lost. N.C. Gen. Stat. § 13-1.

18. *Ohio's* Constitution at Article V, § 4, gives the general assembly the power to exclude those convicted of "bribery, perjury or other infamous crime." A recent amendment to Ohio codes, however, restores any rights lost upon conviction when the prisoner is either released from prison, after serving a maximum sentence, or released from parole. Ohio Rev. Codes § 2967.16.

19. *Oregon's* Article II, § 3 disfranchises upon conviction of a crime punishable by imprisonment in the penitentiary, but the Legislature has enacted a provision for automatic restoration while on probation or parole, and upon final discharge from parole or prison. Oregon Rev. Stats. §§ 137.240, 137.250.

20. *Pennsylvania's* Constitution, Article 7, § 1 provides the qualifications of electors and prescribes no disfranchising acts. Additionally, Penns. Codes Title 25, § 623-2(k), 951-2, 2602, and Title 19, § 893 make the fulfillment of a prison sentence the "equivalent" of a pardon by the governor.

21. *South Dakota* has a constitutional provision disqualifying those convicted of "treason or felony." South Dakota Const. Art. VIII, § 1. Nevertheless, the Legislature has codified both the suspension of civil rights while in prison, S.D. Code § 23-48-35, and the restoration of such rights upon discharge from prison or completion of sentence if on parole, S.D. Code § 24-5-2.

22. *Tennessee*—While the Tennessee Constitution allows the Legislature to disfranchise ex-felons, Art. IV, § 2, in 1973, the Legislature repealed the implementing statute that disfranchised those convicted of infamous crimes. Tenn. Code. Ann. § 2-205.

23. *Vermont* seemingly has no disqualifications based upon conviction of crime. Vermont Const. Chapter I, Art. 8, and Chapter II, § 32.

24. *West Virginia*—Article IV, § 1 of West Virginia's Constitution prohibits those persons who are "under conviction of treason, felony or bribery in an election." However, W.V.C. § 3-1-3 has been interpreted, in 1972, by the State to provide for automatic restoration upon completion of sentence or parole.

25. *Wisconsin* — Disfranchises those convicted of "treason or felony," unless restored to civil rights, Wisc. Const. Art. 3 § 2, W.S.A. 6.03(1)(b); but Wisc. Stats. § 57.078 restores civil rights upon completion of sentence.